

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**JURY TRIAL DEMANDED**

Thomas J Chisholm II  
*Name of Plaintiff,*

COMPLAINT

v.

Walmart Incorporated.  
Walmart Board of Directors (12 Members)  
Doug C. McMillon, President/C.E.O. Walmart Incorporated  
Greg Foran, President/C.E.O. Walmart U.S.A.  
David Cheesewright, President/C.E.O. Walmart International  
Hamid Tabibzada Market Manager  
Kathy, Carol, and Thea, Riverhead Store Administrators  
Alan Yamaji, Riverhead Store Manager  
David Co-Manager  
Carlos, Assistant Store Manager  
Travis, Assistant Store Manager  
*Name of Defendants*

**CV 17 2255**

**AZRACK, J.**

**TOMLINSON, M.J.**

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ APR 06 2017 ★  
LONG ISLAND OFFICE

This action is brought for discrimination is employment pursuant to:

Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e- 17  
(amended in 1972, 1978 and by the Civil Rights Act of 1991, Pub. L. No. 102-166)  
(race, color, gender, religion, national origin).

Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 – 12117  
(amended by the ADA Amendments Act of 2008, Pub. L. No. 110-325 and the  
Civil Rights Act of 1991, Pub. L. No. 102-166).

Jurisdiction is specifically conferred upon this United States District Court by the  
aforementioned statutes, as well as 28 U.S.C. §§ 1331, 1343. Jurisdiction may also be appropriate  
under 42 U.S.C. 1981, 1983, and 1985(3), as amended by the Civil Rights Act of 1991, Pub. L. No.  
102-166, and any related claims under New York Law.

Jurisdiction is specifically conferred upon this United States District Court by the aforementioned statutes, as well as 28 U.S.C. §§ 1331, 1343. Jurisdiction may also be appropriate under 42 U.S.C. §§ 1981, 1983 and 1985(3), as amended by the Civil Rights Act of 1991, Pub. L. No. 102-166, and any related claims under New York law.

1. Plaintiff resides at:

1040 Flanders Road  
Street Address  
Suffolk, New York, 11901, 631-496-0353  
County State Zip Code Telephone Number

2. Defendant(s) resides at, or its business is located at:

\_\_\_\_\_  
Street Address  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
County City State Zip Code

3. The address at which I sought employment or was employed by the defendant(s) is:

1890 Old Country Road  
Street Address  
Suffolk, Riverhead, New York, 11901  
County City State Zip Code

4. The discriminatory conduct of which I complain in this action includes  
(check only those that apply).

☐ Failure to hire.  
☒ Termination of my employment.  
☒ Failure to promote.  
☐ Failure to accommodate my disability.  
☐ Unequal terms and conditions of my employment.  
☒ Retaliation  
☐ Other acts (specify): Different treatment

**NOTE:** Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court.

5. It is my best recollection that the alleged discriminatory acts occurred on:

5/14 - 5/25/16  
Date(s)

6. I believe that the defendant(s) (check one)

☐ is still committing these acts against me.  
☒ is not still committing these acts against me.

7. Defendant(s) discriminated against me based on my:  
(check only those that apply and state the basis for discrimination, for example,  
what is your religion, if religious discrimination is alleged)

☒ race ☒ color  
☐ gender/sex ☐ religion  
☐ national origin  
☒ disability  
☐ age. If age is checked, answer the following:

I was born in 1964. At the time(s) defendant(s) discriminated against me,  
Year

I was ☒ more ☐ less than 40 years old. (check one).

**NOTE:** *Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court.*

8. The facts of my case are as follows:

(See attached Complaint and Papers)

---

---

---

---

---

---

---

---

---

---

*(Attach additional sheets as necessary)*

**NOTE:** *As additional support for your claim, you may attach to this complaint a copy of the charge filed with the Equal Employment Opportunity Commission, the New York State Division of Human Rights, or the New York City Commission on Human Rights.*

9. It is my best recollection that I filed a charge with the New York State Division of Human Rights or the New York City Commission on Human Rights regarding defendant's alleged discriminatory conduct on: \_\_\_\_\_  
Date

10. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct on: 7/20/16  
Date

### FACTS

I was hired by The Walmart Incorporated January 24<sup>th</sup> 2014 and employed at the Riverhead Walmart located at 1890 Old Country Road, Riverhead, New York.

Once training was I completed the required CBL's (Computer Based Learning) Modules, I began working the overnights from 10pm - 7am Eastern Time Sunday-Thursday shortly thereafter. I was trained to be thorough and effective, always putting the public and fellow Associates safety and health FIRST! And I did.

I began noticing hazardous situations and injurious practices caused by the supervisors and managers in charge of the overnight crew and brought this to the attention of Management.

I explained to Management that due to the size of the newly erected Riverhead Walmart, the overnight maintenance staff needed to be adequately staffed and left in tact. The maintenance crew was being left with inadequate numbers in personnel and being made to do other store operations leaving the store uncleaned properly creating danger to the very important customers and Associates utilizing the Riverhead Walmart. It was more important to the managers to have the inventory on the shelves for sale rather the safety and cleanliness of the property that the public and workers utilized everyday.

Things began to change. I was being ostracized and overlooked for certain duties and promotions.

I started receiving negative evaluations and disciplinary coaching for nothing.

Although it was my idea to appoint a Maintenance Manager/Supervisor so that the duties required by law, store policy and professional ethics could be met daily after Assistant Manager Carlos told me that "there will never be such a job!", I was suddenly told by the then new Store Manager,

Alan Yamaji that there indeed had been approval from the Administration to hire a Maintenance Supervisor and that myself and Jesus would be interviewed. Jesus worked on the 10pm-7am maintenance crew too. (last name unknown)

This interview never came to pass for me.

I was shortly thereafter told that Nelson would be this Supervisor. (last name unknown)

The discriminatory treatment became worse and I my health began to deteriorate rapidly because of it.

Ailments reoccurred frequently and I had to go out on leave numerous times and was fired without adequate notice on May 25, 2016.

Prior to being fired and told to reapply, a friend, coworker and management insider approached me and told me that it was well known throughout the supervisors and management it was said that aware of the unfair and that “a black man with a felon will ever hold the Maintenance Supervisor title.”

I filed my complaint with the EEOC and was granted “The Right to sue” on December 28<sup>th</sup> 2016.

**Only litigants alleging age discrimination must answer Question #11.**

11. Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct (*check one*):

\_\_\_\_\_ 60 days or more have elapsed.

\_\_\_\_\_ less than 60 days have elapsed.

12. The Equal Employment Opportunity Commission (*check one*):

\_\_\_\_\_ has not issued a Right to Sue letter.

✓ \_\_\_\_\_ has issued a Right to Sue letter, which I  
received on 12/28/2016.  
Date

**NOTE:** Attach a copy of the Right to Sue Letter from the Equal Employment Opportunity Commission to this complaint.

WHEREFORE, plaintiff prays that the Court grant such relief as may be appropriate, including injunctive orders, damages, pre-judgment interest, costs, and attorney's fees.

Thomas J. Chiselman II  
PLAINTIFF'S SIGNATURE

Dated: 3/28/17

1040 Flanders Road  
Address

Flanders NY 11901

631-496-0353  
Phone Number 631 496 0353

1<sup>st</sup> Letter (1 pg)

Walmart  
Administrators.

10/5/2015

Cathy, Carol and Thea.

My name is Thomas J. Chisholm II, (WIN # 219731723). I am an Overnight Maintenance Associate at 02906, 1890 Old Country Road, Riverhead, New York 11901. I began employment at the Riverhead Walmart Store on January 24, 2014.

Since that time, there have been certain unfortunate events that have taken place that are jeopardizing my continued employment with Walmart Incorporated. As an Asset, I am requesting a hearing from our Market Manager Cathy, (last name unknown at this time).

These concerns are as follows;

1. There are three unwarranted coaching on my working record that are unjustified. After intelligent and careful consideration, I have no other choice than to believe 2 are retaliatory in nature.
2. I am requesting a viewing of the security tape on or about the morning of July 14, 2015.
3. As a Maintenance Associate with prior Property Management Experience including certain construction and building trade certification along with 33 years' experience, there are many flaws with the system of operations that we are currently utilizing. We are wasting Tens of Thousands of dollars that could be better reflected in the paychecks of the Stockholders and Employees of Walmart Incorporated.

I am certain if allowed the opportunity to discuss these concerns all is not beyond correction at this point.

I also understand that your time is very important as well and respectfully request to meet with you Monday, October 19 2015 to better prepare the names, times, dates and witnesses if necessary.

In summation, I believe in justice and that no matter what race, color, religion, sex, or any other personal character traits one possess, we all are human beings and just because your station in life my pay you more or your title is higher than someone else, doesn't give way to mistreatment or tyranny in life especially the work place just because a person speaks for what is right.

I thank you in advance for listening.

Thomas J. Chisholm II

Thomas J. Chisholm II



2nd Letter (5 pgs)

Walmart Administrators  
Kathy, Carolyn and Thea. (last names unknown at this time)

11/02/15

Thomas J. Chisholm II  
WIN # 219731723  
Overnight Maintenance Associate  
Riverhead, New York 11901  
Store 02906  
Cell Number 6313841857

Re: Employment Concerns, second letter that I regret has to be written at all.

Ladies, hoping all is well with you, your family and loved ones.

Previously I wrote to you via email, ([thomaschisholm2140@yahoo.com](mailto:thomaschisholm2140@yahoo.com)) to express a genuine concern for the conduct towards me by certain Assistant Managers that have or had charge over me during my employment at Walmart Incorporated. The last correspondence dated October 5, 2015 will also be attached to this one for reference sake.

As mentioned, I feel that there is no another way to see this through or I would not disturb any of you because I am aware of your importance to the every day functions of our company but my very livelihood has been threatened unjustly and I am not one to simply go off into the night without full recourse for justice on any level. I pray for your patience and understanding throughout this process.

The dates of these incidents are easily accessible to you through the Walmart Computer System.

The first incident began as follows:

Assistant Manager Ray. (last name unknown at this time). Came in one night to relieve Assistant Manager Carlos due to personal illness. Approximately 1:30 am on that date Ray announced on the public address system within the store that he was upset because the associates on the night shift seem to work hard for Carlos and not him. He continued to state that he was "going to pick someone to make an example out of to show that he was not playing!", this too can be confirmed by seeking out the Associates that were on that night and are still employed at the Riverhead Walmart. He passed me at the back of the store near the rear restrooms and I asked him, "how is your fiancée doing?" he replied tempestuously, "good!". He walked around seeming annoyed and upset for some time. After lunch approximately 3-3:30 am. Bobby, Ed and I, ( also Maintenance Associates) stopped in the front of the store near the maintenance closet to see what area of the store we each were attending to and Bobby as usually said something silly, we laughed as we often do and continued on with our individual duties. Kevin Spane, (then a Maintenance Associate and now does stock and for some reason is allowed to carry a portable monitor when some supervisors cant find one, heard and told Support Manager Andre Freeman jokingly over the portable communication monitor that Ray also carries and overheard Kevin and say, "these guys aren't working their joking"! "they better not be"! Assistant Manager Ray stated very angrily. Subsequently I was called to the front Managers office shortly thereafter. Once there, Ray and the newly appointed Support Manager Donovan were in the office when I arrived. Ray explained that I was there because it had come to his attention that I was not doing my job and this is the purpose of this meeting. After Ray said what he had to say I interjected in the conversation that what he was saying can't possibly

be true due to the fact that at that time I was receiving compliments daily from customers, visiting managers, associates on how clean the bathrooms continuously are. As a matter of fact, the reason why I am still cleaning the restrooms is for that very reason. Why would I be asked to continue to do a job by all the managers including Craig Winkler who was the Store Manager at the time to take whatever I need off the shelves to continue to keep the bathrooms clean to a level of a "new store look" in which I have to date. Jana, Cathy, Desiree, Ron, Jesus, and many more associates both overnight and other shifts as well will attest to the fact that I keep those bathrooms tip top with great concern for my fellow associates, customers and family members for continuing cleanliness for them and their families too. I believe that Assistant Manager Ray was very upset because he had to role out of bed on an early winter night to come in and relieve Assistant Manger Carlos and his unprofessional conduct allowed misplaced anger and resentment to come out in the form of an unjustified write up.

The second coaching came from Assistant Manager Travis who went beyond the 6 month period of lateness and call-outs to conjure up another unjustified write up which I am convinced is in retaliation at the behest of Assistant Manager Carlos to me for complaining about the misuse of the overnight maintenance staff who at the time was being called to do other things than maintenance. However, this too would not have been an issue if this process did not place the public, associates and others in jeopardy and fall upon the shoulders of the overnight maintenance staff for not having the facility completely safe and clean for the following day business. This is problematic because in the morning prior to opening the store for our valued customers the store was not safe or presentable for business due to the fact many areas of the store had not been attended to by maintenance because we, the maintenance staff was hanging dressing in receiving room one, stocking shelves, and manning the cart-rail. It is a matter of simple physics and mathematics as illustrated in the chart below taken from the Fairfax County Office Space Standards as an example.

#### **Estimated Operations and Maintenance Staffing Requirements**

"The mission of the Facilities Management Department (FMD) is to provide safe and well- maintained facilities. For several years new facilities were added to FMD's maintenance inventory without additional maintenance staff. This has prevented FMD from completing preventive maintenance on desired schedules, timely-routine maintenance and repair delays. For instance, our desired painting schedule is 5 to 7 years; however this cannot be accomplished with current staffing levels. Many non-public areas have not been painted for 10 years or more. Research indicates that FMD is significantly understaffed by current industry standards and cannot afford to reduce any positions without a detrimental effect on the appearance and condition of County facilities.

The General Services Administration (GSA) has developed a series of formulas to forecast Operations and Maintenance (O&M) personnel requirements needed to maintain facilities at their recommended standards and to maximize the life expectancy of facility systems and equipment. These formulas estimate the man-hour requirements for Preventive Maintenance (PM), service calls, repairs and minor improvements in each of the trade areas. PM is based on the actual equipment in each facility and GSA has specific formulas for each trade area that estimates the man-hour requirements to accomplish all other types of maintenance. These formulas are based on the type, use and square footage of the facility. The GSA refers to facility alterations and renovations as Job Orders. FMD generally hires outside contractors to perform facility alterations and renovations. Therefore, the estimated hours are not included in the projected staffing shortfalls described below.

The Facilities Management Department currently employs 125 trades staff and supervisors to maintain approximately 180 facilities. However, when applying the GSA formulas, approximately 160 Full-

Time Equivalent Positions (FTE's) are required to properly maintain all County facilities. This equates to a staffing shortage of 35 FTE's. The effect of this staff shortage is evident in some PM requests not being completed and delays in responding to non emergency service requests. Any further staff reductions to the Facilities Management Department would have a detrimental effect on the condition of County facilities – one of our biggest assets.

In 2005, the International Facility Management Association (IFMA) surveyed over 650 Operations and Maintenance organizations to compile benchmarks. Over 650 facility organizations participated in the survey and the results were tabulated in IFMA's Operations and Maintenance Benchmarks Research Report #26. The report lists overall maintenance staffing levels based on facility size and a staffing ratio of one maintenance FTE per 47,000 rent able square feet. The Facilities Management Department currently employs 125 trades staff and supervisors to maintain approximately 7,461,291 RSF (Rentable Square Feet). When applying the IFMA benchmark, a total of 159 FTE's are required to maintain FMD's current facilities. This equates to a staffing shortage of 34 FTE's.

Using sound formulas and benchmarks from two highly respected organizations, GSA and IFMA, FMD has determined that Operation and Maintenance is understaffed by at least 30 positions.

#### Appendix A

##### Overall Maintenance Staffing

##### Facility Size (RSF) N Total Maintenance Staff

Less than 50,000	44	3.00	50,000 – 100,000	97	5.08	100,001 – 250,000	143	7.53	250,001 – 500,000	124	9.00
500,001 – 750,000	51	11.50	750,001 – 1,000,000	39	25.50	1,000,001 – 1,500,000	31	34.74	1,500,001 – 2,000,000	11	38.23
2,000,001 – 3,000,000	8	51.50	More than 3,000,000	19	155.00						

Staffing ratio – 1 Maintenance FTE per 47,000 RSF

This table is taken from IFMA's Operations and Maintenance Benchmarks Research Report #26

It has been scientifically proven that it takes at least 5-7 maintenance persons to maintain a facility the size of the Riverhead Walmart at all times and on all shifts or any given shift will fall short of its' goal.

The third and final write up came again just two days later from Assistant Manager Travis who left a message for Assistant Manager Carlos to coach me because supposedly a customer complained about the condition of the front ladies restroom after I had left for the day. Assistant Manager Travis also stated in his correspondence that a Market Manager witnessed the same and instructed him to write the responsible maintenance associate up. It may take a leap of intellect to ascertain that this is an outrageous falsehood. Nearly 2 years I have kept those restrooms immaculate with praise from other visiting managers, customer, and associates in so much as to be invited for dinner and other job offers from people such as Paul the Store Manager of Dicks Sporting Goods who reverentially replied, "I wish my guys did as well a job as you do Thomas!" As mentioned supra, why would a good manager continue using a tool that doesn't work? I took over the responsibility of the restrooms because it was always an issue that other overnight maintenance staff did not want to clean the restrooms so to alleviate this problem I asked to do the restrooms, break room, front maintenance closet and then safety sweep the facility and have successfully done so to date.

This is not my first rodeo at caring for property, personnel and consumers including animals and their unpredictability. A copy of my extensive work resume can be supplied if need be.

Abbess Farm located Calverton, New York just around the corner from the Riverhead Walmart, I was hired by a private business owner to oversee the daily functions of 134 acres of property in the private sector worth over 100 million dollars, included many building structures, over 30 people, 60 animals, company and personal vehicles. All facets of construction and its' prospective contractors, were handled by me. Reducing operations cost and optimizing the usage of office and facility space was always a welcomed challenge.

I have discovered after spending over 35 years in the construction/facility operations business, that it takes a well staffed facility maintenance department that is separate from the retail department and its' on entity answering only to the Administration of such to be successful in a company the size of Walmart Incorporated mainly the Riverhead Walmart store #02906.

I also am aware that there are positions such as Building and Facility Manager within our company and why there is not one at the Riverhead Facility, I am not privy to. Whom ever this person will be in the future will have my full cooperation without waiver.

There are also many incidents concerning Assistant Manager Travis that leads someone of average intelligence to believe that his conduct grossly falls below that of a trained management professional. He has denied me as a full time Associate the full 40 hrs per week guaranteed a full time Associate, he was not aware of the clothing replacement policy that has been in place for those who destroy personal clothing during the performance of their duties, he threatens Associates during the 10:00 pm meeting instead of using humble coercive tactics to ensure compliance and his demeanor is always aggressive and unprofessional. His oral presentation is unacceptable in a civilized work place.

*Wherefore*, I am requesting a meeting on or about November 12, 2015, 10:00 am with the Administrative body that oversees the Riverhead Walmart, 02906 and the witnesses of my choosing for the following concerns:

1. Why were the Assistant Managers mentioned supra allowed to unprofessionally target another assets in the form of a Maintenance Associate and attempt to have this Associate coached for less than acceptable infractions ultimately leading to an unjustified termination?
2. Why weren't the aforementioned Assistant Managers thoroughly trained so that such an incident avoidable?
3. I am requesting all material in the form of absences, filed coaching, surveillance material, to have witnesses obtained by myself including two that will be present at the requested meeting, a viewing of the surveillance video of on or about the morning hours of July 14, 2015 to determine what actually happened to personal property valued at 170.00 dollars stolen from me.
4. That my working record for Walmart Incorporated be restored to its' original status prior to these fictitious and deliberate coaching that were designed to bring about an early demise resulting ultimately in termination of my employment at the Riverhead Walmart located at 1890 Old Country Road, Riverhead, New York 11901
5. That I am not terminated, laid off, hours cut, or any other form of retaliation used against me.



6. Any and all relief deemed just and proper by the Administrative Personnel of Walmart Incorporated and it's lawfully appointed agents.

Final thoughts, I would like to take this time to first thank Walmart Incorporated for giving me the opportunity by hiring me when most companies did not. However, it would fall far beyond the average intelligence of a human being to accept what has taken place to me by these trusted positioned people who for whatever their personal reason(s) targeted me for termination through misuse of the powers entrusted to them by their superiors.

There are rules of conduct in place that have long been established so that the training and handling of Associates can properly be administered to avoid these situations and if even one of these rules are omitted or abused catastrophe is sure to follow.

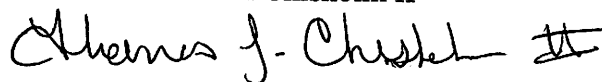
I, Thomas J. Chisholm II, have been created by a supreme being just as you all have if you do so believe and it is my belief that we all owe it to one another to treat one another with love, respect and decency so that upon conclusion of our meetings to one another, all concerned will be left with self dignity and hope for a better tomorrow. After all our motto is to "save money so that one can live better" but first the opportunity to make money unabated and without being prohibited by managers who have been given charge over you to do so freely as set forth within the Declaration of Independence to, "seek life, liberty and the pursuit of happiness" as an inalienable human right to all can be achieved.

It is also my intention to go as far as necessary to ensure that justice to my satisfaction has been met even to Bentonville Arkansas, Walmart Incorporated Headquarters. This is how important this matter is to me, my family and other present and future Walmart Incorporated Assets. This must never be allowed to happen again to anyone.

Through some form or another, all of us must leave Walmart Incorporated someday, even unto death, it is to my expectation that I will leave Walmart Incorporated barring an untimely demise that I will exit my employment on my own volition.

Respectfully submitted,

Thomas Jefferson Chisholm II

A handwritten signature in black ink that reads "Thomas J. Chisholm II". The signature is written in a cursive, flowing style with a double underline at the end.

3<sup>rd</sup> letter (5 pgs)

Doug McMillon  
President/Chief Executive Office  
Walmart Incorporated  
702 SW 8<sup>th</sup> st,  
Bentonville AR 72716  
Doug.McMillon@wal-mart.com  
(add phone)

04/01/16

Greg Foran  
President and C.E.O. /Walmart U.S  
Walmart Incorporated  
702 SW 8<sup>th</sup> st,  
Bentonville AR 72716  
Greg.Foran@wal-mart.com  
(add phone)

Hamid Tabibzada  
Market Manager  
750 Middle Country Road  
Middle Island, New York 11953  
[hamid.tabibzada@walmart.com](mailto:hamid.tabibzada@walmart.com)  
Telephone # 6319240081

Thomas J. Chisholm II  
Riverhead Walmart  
Store # 02960  
Maintenance Associate  
WIN # 219731723  
Home address  
1040 Flanders rd  
Riverhead, New York 11901  
[thomaschisholm2140@yahoo.com](mailto:thomaschisholm2140@yahoo.com) email.

Esteemed Gentlemen,

I pray that your family and friends including those extended family members affiliated with Walmart Incorporated are well and continue to prosper in all endeavors.

This correspondence is not a constructed upon any feelings of disgruntlement or vengeance just facts.

I believe that all people are created equal and should be treated with at least common civility, respect, non-bias, or malice of any kind. I am sending you this correspondence to address problems occurring during my 2 plus years as a Maintenance Associate that took place at the Riverhead Walmart store 02906 located at 1890 Old Country Road, (route 58) Riverhead, New York 11901.

At the conclusion of orientation I felt a strong sense of commitment both from Walmart and myself. I had the feeling that after all the disappointment in my life I was presented with another chance of proving myself deserving and believed the sky was the limit. I truly believed that the opportunity presented here at Walmart was the break I needed to advance my character, livelihood and finances.

At the conclusion of orientation I felt a strong sense of commitment both from Walmart and myself. I had the feeling that after all the disappointment in my life I was presented with another chance of proving myself deserving and believed the sky was the limit. I truly believed that the opportunity presented here at Walmart was the break I needed to advance my character, livelihood and finances.

I have tried the chain of command to no avail and deem it necessary to bring these matters to your respective offices so that my concerns will be taken seriously and remedied promptly if at all possible.

I Originally drafted this letter to Doug McMillon and Greg Foran but it did not sit well with me to handle this in a way that would disrespect your office and title so I am presenting this to you. I thank you in advance Sir.

Working for Walmart started out as a temporary job for me yet this changed once orientation had been completed. I felt so proud to be a part of the Walmart family and at times I still do. I am honored to have met so many hard working wonderful people of many nationalities.

There exist an air of dignity within the core rules of conduct by all personnel and the Sam Walton philosophy of customer care and respect for the front line employees. I decided to stay, dream again and grow with my new extended family at Walmart.

Once I began working at the Riverhead Walmart I noticed that there existed so many flaws in the way the Maintenance Department worked having over 30 years experience in the construction and property management business so I spoke out to management and explained what I believed to be the proper remedy for our shortcomings.

There are many times we run out of supplies that are used daily by all three shifts of maintenance, hand and toilet paper, hand soap and other pertinent approved chemicals.

The newly appointed Store Manager Alan Yamaji told me at our very first meeting that, "one of my Assistant Managers told me that *Thomas talks big!!*" I am a balloon of hot air. If I were the manager of this Assistant, he would have been promptly reprimanded for a statement of such unprofessionalism and conduct ethically unbecoming of an executive member of Walmart Incorporated. He was allowed to assassinate another employees' professional character. Furthermore, are we not all assets of the same institution? You can't imagine how I felt from the outset and I knew my career with Walmart would not go any further even though I have over 30 years experience, college background, computer literate including Microsoft applications, building trade certificates from Nassau/Suffolk Building Trade Organization and a host of other important qualities including people savvy and friendly. No matter what or how hard I tried, no matter what tests I passed or what position I would qualify for I was all but cooked, and below will prove this to be true and accurate.

After several attempts and conversations with Assistant Managers Carlos and Travis informing them that if there were a maintenance manager or supervisor who could delegate projects and every day modus operandi, the Riverhead Walmart would run so well that we would never run out of supplies leading to shrinkage because we ran out of supplies such as paper hand towels, toilet paper and hand soap for our "very important customers and all Walmart Assets" and of course we always run out of supplies.

Nearly 2 years had passed and although I had been very boisterous about how terribly our maintenance department had been running and imploring management to name a qualified Maintenance Manager or Supervisor finally Store Manager Alan Yamaji called me to the office one morning and advised me that a Maintenance Supervisor Position had been approved and that I would be interviewed for this position as well as other maintenance members who were to be interviewed as well. This interview never took place and Nelson was highly recommended for the position. No one else was interviewed including Jesus who upon his belief is also qualified yet never interviewed as promised by our Store Manager. He did however inform that the Middle Island Walmart was seeking such a supervisor and I declined for geographical reasons yet told Jesus about the offer too. I guess who ever told Mr. Yamaji that I "talk big" also recommended Nelson for the Maintenance Supervisor Position.

It was a blessing in disguise not being named the Maintenance Supervisor because the problem of not having enough maintenance people would lead to jobs not being completed properly and the Maintenance Supervisor would become the fall guy, we all became fall guys. One of my major concerns about the operation of the maintenance department is the use of the maintenance personnel doing other jobs outside of maintenance such as stocking or unloading trucks. What would arise is not enough coverage on the maintenance staff to properly and securely complete the duties needed described in the list of Maintenance Associate duties.

On or about November 15, 2015, I drafted a letter of the aforementioned concerns to Kathy, Carolyn Lynch McKinley and Thea, members of our Administrative Office. (see attached a copy for your viewing). Kathy and Thea's last names are unknown to me at this junction.

In response a meeting was assembled between Carolyn Lynch McKinley, (hereafter Carolyn) the newly acquired Riverhead Store Manager Alan Yamaji and I sometime late in 2015.

Leaping forward, some of the issues were addressed and some not. The major concern that I wished to address is the misappropriation of the overnight maintenance staff including myself.

Store Manager Alan Yamaji told me at our very first meeting that, "one of my Assistant Managers told me that Thomas talks big!!" I guess I was just a balloon of hot air.

When unnecessary expenses are dispersed all of Walmart Incorporated feels the loss.

There are outside contractors who are usurping a big chunk of the profit when the Maintenance Personnel should be performing these menial task.

One night as I cleaned the front mens' restroom a sheet metal toilet stall had been out of service due to a missing hing and in walked an outside contractor who was literally there for 5 minutes and walked out laughing at easy money. How much could Walmart have saved if a member of its' maintenance department took a tool specifically for that hing and repaired it in-house? Window cleaning, sidewalk power washing, using items off the shelf because no one has designated the proper method for keeping inventory. The new Walmart Store of Riverhead has been up and running for over 2 years and if someone kept a daily/weekly/monthly record of supplies both being used and ordered from distribution, the supplies characteristics of the Riverhead Walmart should have been established by now thereby eliminating ordering 1 pallet of toilet paper and 4 pallets of paper hand towels when it should have been the other way around. 1 pallet of paper hand towels and 4 pallets of toilet paper, leaving us with an overstock of paper hand towels and no toilet paper creating shrinkage because now we must pull items for sale for our customers off the shelves due to improper supply control.



Another significant issue is that the Riverhead Walmart is approximately 150,000 square feet or more. If remotely correct, it has been determined by experts who assemble construction, building trades including janitorial personnel. Staffing ratio – 1 Maintenance FTE per 47,000 RS square foot properly according to Estimated Operations and Maintenance Staffing Requirements for Fairfax County (as a parallel) For this point. I have provided a copy of this report for you examination.

To further this point, most fortune 500 companies separate its' maintenance department from all other departments for the very purpose of non conflict which in this case is apparent and undermines the very purpose of having a Building Maintenance Department if the members of such a department are being forced to do other jobs during the course of each shift.

### **Estimated Operations and Maintenance Staffing Requirements**

The mission of the Facilities Management Department (FMD) is to provide safe and well- maintained facilities. For several years new facilities were added to FMD's maintenance inventory without additional maintenance staff. This has prevented FMD from completing preventive maintenance on desired schedules, timely-routine maintenance and repair delays. For instance, our desired painting schedule is 5 to 7 years; however this cannot be accomplished with current staffing levels. Many non-public areas have not been painted for 10 years or more. Research indicates that FMD is significantly understaffed by current industry standards and cannot afford to reduce any positions without a detrimental effect on the appearance and condition of County facilities.

The General Services Administration (GSA) has developed a series of formulas to forecast Operations and Maintenance (O&M) personnel requirements needed to maintain facilities at their recommended standards and to maximize the life expectancy of facility systems and equipment. These formulas estimate the man-hour requirements for Preventive Maintenance (PM), service calls, repairs and minor improvements in each of the trade areas. PM is based on the actual equipment in each facility and GSA has specific formulas for each trade area that estimates the man-hour requirements to accomplish all other types of maintenance. These formulas are based on the type, use and square footage of the facility. The GSA refers to facility alterations and renovations as Job Orders. FMD generally hires outside contractors to perform facility alterations and renovations. Therefore, the estimated hours are not included in the projected staffing shortfalls described below.

The Facilities Management Department currently employs 125 trades staff and supervisors to maintain approximately 180 facilities. However, when applying the GSA formulas, approximately 160 Full-Time Equivalent Positions (FTE's) are required to properly maintain all County facilities. This equates to a staffing shortage of 35 FTE's. The effect of this staff shortage is evident in some PM requests not being completed and delays in responding to non emergency service requests. Any further staff reductions to the Facilities Management Department would have a detrimental effect on the condition of County facilities – one of our biggest assets.

In 2005, the International Facility Management Association (IFMA) surveyed over 650 Operations and Maintenance organizations to compile benchmarks. Over 650 facility organizations participated in the survey and the results were tabulated in IFMA's Operations and Maintenance Benchmarks Research Report #26. The report lists overall maintenance staffing levels based on facility size and a staffing ratio of one maintenance FTE per 47,000 rent able square feet. The Facilities Management Department currently employs 125 trades staff and supervisors to maintain approximately 7,461,291 RSF (Rent able Square Feet). When applying the IFMA benchmark, a total of 159 FTE's are required to maintain FMD's current facilities. This equates to a staffing shortage of 34 FTE's.

Using sound formulas and benchmarks from two highly respected organizations, GSA and IFMA, FMD has determined that Operation and Maintenance is understaffed by at least 30 positions.

Appendix A

Overall Maintenance Staffing

Facility Size (RSF) N Total Maintenance Staff

Less than 50,000 44 3.00 50,000 – 100,000 97 5.08 100,001 – 250,000 143 7.53 250,001 – 500,000  
124 9.00 500,001 – 750,000 51 11.50 750,001 – 1,000,000 39 25.50 1,000,001 – 1,500,000 31 34.74  
1,500,001 – 2,000,000 11 38.23 2,000,001 – 3,000,000 8 51.50 More than 3,000,000 19 155.00

Staffing ratio – 1 Maintenance FTE per 47,000 RSF

This table is taken from IFMA's Operations and Maintenance Benchmarks Research Report #26

Definitions Appendix A

Assignable Square Feet

Usable Square Feet

Rent-able Square Feet

Building Lobby

\*\* See Cost Estimate to Move the Office of Transportation to Lease Space at Centerpoint1, Option A

\*\*\* See Cost Estimate to Move the Office of Transportation to Lease Space at Centerpoint1, Option B

This is not just a job to me it is my way of life. This treatment of being ostracized and unheard has lead to physical and emotional trauma to my being causing chronic ailments and detriment to my livelihood and career as a Walmart Asset.

The need of all assets should be handled with dedicated care from the Executive body of Walmart Incorporated and this behavior falls far short of the training these Executives should have undertaken so that such conflicts can never arise.

I used the "Open Door" policy and was treated as a "Whistle Blower" condemned for exercising these policies and wanting to bring forth the best utilization of the Walmart Maintenance Department.

Below also find the copy of the letter sent to Administrative personnel dated 11/2/15.

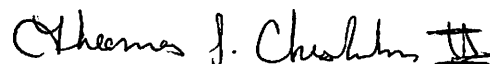
Please forward all correspondence to my email address, [thomaschisholm2140@yahoo.com](mailto:thomaschisholm2140@yahoo.com)

I formally request a meeting with just the Market Manager of the Riverhead Walmart Store #02960 approximately 2 weeks from the acquirement of this document.

I would like to thank you for taking the time to read this document and promptly addressing all issues within.

Respectfully Submitted,

Thomas J. Chisholm II



EEOC - Questionnaire Answers #.1

Answers to page 2 question #5 What happened to you that you believe was discriminatory? (2 pgs)

1. Race – I am African American and an ex- felon, Management felt that I spoke above my station because I was not apart of Management or click that bowed down and brown nosed. I was apart of the maintenance staff and in no position to question the way the mistreatment of the maintenance staff took place. I was also a “Whistle blower” and should do as I was told with no questions asked. Who was I to challenge these practices that were taking place before my employment. Furthermore, being a black lowly Maintenance Associate with a past criminal record how dare I!
2. This supervisor position did not exist when I started working for Walmart 1/24/14 and after just 6 months on the job I noticed why the Riverhead Walmart was not up to standard every morning prior to the store opening for business each day. I brought to the attention of the Assistant Store Managers that it takes at least 7 Maintenance Associates to properly clean over this 150,000 store and make it safe for both the very important customer and the Walmart Staff most of the Maintenance staff were being used to do other details that were not of maintenance and left the remainder of the maintenance staff grossly under staff and 3 maintenance personnel cannot physical complete the jobs needed to safely open for the next day business c . It was I who told the upper management that a Maintenance Supervisor was needed to administer the duties of the Maintenance Associate so that the store would be up to standard once the store opened at 7 a.m. I was told there is no Supervisor position available for this particular store and this position could only be approved by the Administration Office that presides over the Riverhead Store. Several months later I was called to the front office by the new Store Manager Alan Yamaji and told, “ I have good news for you Thomas, we have been approved to create a Maintenance Supervisor position and you are one of the key applicants. I will sit down with you for an interview very soon.” A few weeks later I was informed that Nelson, (last name unknown at this time) had been chosen for the Maintenance Supervisor position) I asked why? And he responded, “ Nelson is who we decided to go with.) Although there were 2 other candidates that were up for this promotion myself and Jesus, (last name unknown at this time) were never interviewed! I believe Nelson (highly light skinned Hispanic/Puerto Rican) was highly recommended by Assistant Manager Carlos, (last name unknown) who is a highly light skinned Hispanic/Puerto Rican who destroyed my employment posture by telling the new Store Manager Alan Jamaji I was full of “hot air” from the outset of the new the appointment of the new Store Manager, once AlanYamaji told me that “one of his Assistant Managers told him that

TJC II

EEOC pg # 2

Answers to page 2 question #6 Why do you believe these actions were discriminatory?

1. Thomas challenged the managers so he will never advance was the word going around the facility.
2. Who does he thinks he is, a black man with a felon will never hold the Maintenance Supervisor title.
3. I was never interviewed as required or promised and I passed every test required to become a manager or supervisor for Walmart.
4. I don't believe that a all supervisors or managers passed the tests requirements for these positions.
5. I am an African American with a criminal history.
6. I am a Whistle blower.

Thomas J. Chisholm

EEOC

# 3

Thomas is full of hot air", I knew from that point my career and advancement with Walmart Incorporated was over!

3. Retaliation- Upon many, many, complaints to all the Managers from the Riverhead Store all the way up to Regional Human Resource Manager Carolyn and the Regional Manager Hamid, that the reason why we are not completing our duties is because the Support Managers and the Assistant Managers were utilizing the Maintenance Associates for duties other than maintenance and being held responsible and reprimanded for these shortcomings. I had been coached and written up for situations that were not my fault constantly.
4. For challenging the unfair usage of the Maintenance Associates and complaints against Support Managers, Assistant Store Managers, Co-Managers, Store Managers, Human Resource Management, and the Regional Manager, I was targeted for unfair treatment and denied even the opportunity for an interview for advancement and ostracized.
5. Complaints for the usage of shelf products for sale, the usage of retail stock and shrinkage, sub par maintenance supply standards and practices and unfair treatment.
6. Bogus coaching and write ups, just outrageous lies against me.
7. Assistant Store Manager Travis, (Currently a State Trooper Cadet) so I have been told, created a fictitious incident against me by writing me up for not cleaning the front female bathroom. I was coached and subsequently warned that just 1 more incident against me would lead to termination of my employment with Walmart.
8. Before I could be written up again I took this matter to the Store Manager and used what is called the "Open Door Policy" This procedure is used to bring issues of concern to the Store Manager by attempting to handle whatever the matter is inhouse before taking it to the Global Ethics Committee of Walmart. I was told at such meeting by the Alan Yamaji the Store Manager that he relied heavily on what his Assistant Store Manager said regardless and this complaint went ignored and proved to the Assistant Managers and Support Managers that I had no recourse so they continued to ostracize me for challenging them in the first place. Many other incidents took place as well.

Thomas J. Chushelm II

Walmart Stores Incorporated  
702 S.W. 8<sup>th</sup> St.  
Bentonville, AR 72716  
18009256278

## **GUIDING PRINCIPLES**

***"THESE PRINCIPLES ARE MEANT TO HELP OUR ASSOCIATES MAKE THE RIGHT DECISIONS, AND ACT WITH INTEGRITY"***

- Always act with integrity.
- Lead with integrity, and expect others to work with integrity.
- Follow the law at all times.
- Be honest and fair.
- Reveal and report all information truthfully, without manipulation or misrepresentation.
- Work, actions, and relationship outside of your position with the company should be free of any conflicts of interests.
- Respect and encourage diversity, and never discriminate against anyone.
- Ask your Manager of Global Ethics Office for help if you have any questions about this Statement Of Ethics, or if you face an Ethical Problem.
- Promptly report suspected violations of the Statement Of Ethics.
- Cooperate with and maintain the private nature of any investigation of possible Ethics Violation.
- When involved in an ethics investigation, you should reveal and report all information truthfully, you should present all the facts you were aware of without personal opinion, bias or judgment.

Walmart 3 Basic Principles are Respect for the individual, Service to our customers and Striving for excellence.



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**New York District Office**

33 Whitehall Street, 5<sup>th</sup> Floor  
New York, NY 10004-2112  
(212) 336-3620  
TTY (212) 336-3622

Thomas Chisholm, II  
1040 Flanders Road  
Riverhead, NY 11901

Re: *EEOC Charge No. 520-2016-03080*  
*Chisolm v. Walmart*

Dear Mr. Chisolm,

The Equal Employment Opportunity Commission (hereinafter referred to as the "Commission"), has reviewed the above-referenced charge according to our charge prioritization procedures. The procedures apply to all open charges in our inventory and call for us to focus our limited resources on those cases that are most likely to result in findings of violations of the laws we enforce.

We have evaluated your charge based upon the information you submitted, and have determined that further investigation will unlikely result in a determination that Respondent violated one of the federal laws enforced by the Commission. Therefore, your charge will be dismissed.

Attached is your Dismissal and Notice of Rights. If you want to pursue this matter further in federal court, your lawsuit must be filed within 90 days of your receipt of the Notice.

Please contact Investigator Sarina Shaver at (212) 336-3776 if you have any questions.

Sincerely,

 for  
Kevin J. Berry  
District Director

12/28/16  
Date

Enclosure(s):  
EEOC Form 161, "Dismissal and Notice of Rights"  
Copy of EEOC handout, "Facts About Filing"



EEOC Form 161 (11/16)

## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## DISMISSAL AND NOTICE OF RIGHTS

To: **Thomas Chisholm, II**  
**1040 Flanders Road**  
**Riverhead, NY 11901**

From: **New York District Office**  
**33 Whitehall Street**  
**5th Floor**  
**New York, NY 10004**



On behalf of person(s) aggrieved whose identity is  
**CONFIDENTIAL (29 CFR §1601.7(a))**

EEOC Charge No.

EEOC Representative

Telephone No.

**520-2016-03080**

**Sarina L. Shaver,**  
**Investigator**

**(212) 336-3776**

**THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**

- ☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- ☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- ☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- ☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge
- ☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- ☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- ☐ Other (briefly state)

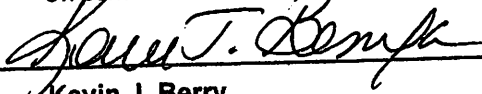
**- NOTICE OF SUIT RIGHTS -**

(See the additional information attached to this form.)

**Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

  
**Kevin J. Berry,**  
**District Director**

**12/28/16**  
 (Date Mailed)

Enclosures(s)

CC: **Scott Forman**  
**Attn: Shareholder**  
**LITTLER MENDELSON - GLOBAL SERVICES**  
**CENTER**  
**2301 McGee Street - Suite 800**  
**Kansas City, MO 64108**